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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/392,270 09/09/99 POIRIER

J 1-21036

EXAMINER

QM32/0913

RICHARD S MACMILLAN  
MACMILLAN SOBANSKI & TODD LLC  
ONE MARITIME PLAZA FOURTH FLOOR  
720 WATER STREET  
TOLEDO OH 43604-1853

NGUYEN, T

ART UNIT

PAPER NUMBER

3726

DATE MAILED:

09/13/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>09/392,270</b>	Applicant(s) <b>Poirier et al.</b>
	Examiner <b>Trinh Nguyen</b>	Group Art Unit <b>3726</b>

Responsive to communication(s) filed on the Election dated 8/23/00.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-16 is/are pending in the application.

Of the above, claim(s) 8-14 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-7, 15, 16 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The <sup>Formal</sup> drawing \_\_\_\_\_, filed on Aug 23, 2000 is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election without traverse of claims 1-7, 15, and 16 in Paper No. 7 is acknowledged.
2. Claims 8-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 7.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-3 are rejected under 35 U.S.C. 102(a) as being anticipated by **Applicant's Admitted Prior Art** (as set forth in lines 13-29 of page 1, all of pages 2 & 3, lines 1-10 of page 4, lines 19-24 of page 6, lines 1-22 of page 7, lines 16-26 of page 8, and lines 22-25 of page 9; hereinafter is referred to as **AAPA**).

**AAPA** discloses that it is old and well known to manufacture a vehicle frame structure by: providing a closed channel workpiece member; performing a heat treatment process to softening the workpiece member; and deforming the workpiece member to form a vehicle frame structure.

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Further note that the use of inductive heating coil and quenching ring are well known and conventional as admitted by the Applicants in lines 18 & 19 of page 8 and line 23 of page 9.

Regarding claim 3, it is considered that the claimed step of "moving the workpiece member through an inductive heating coil and a quenching ring", as such, is an inherent step within AAPA's retrogression heat treatment process, since this step is a necessary step that one of ordinary skill in the art must carry out when performing the heat treatment process.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 4-7, 15, and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Applicant's Admitted Prior Art** (as set forth in lines 13-29 of page 1, all of pages 2 & 3, lines 1-10 of page 4, and lines 1-22 of page 7; hereinafter referred to as AAPA).

Regarding claims 4-7, AAPA sets forth the invention as cited above with the exception of the orientation of the workpiece. It would have been obvious to one of ordinary skill in the art at the time the invention was made that whether the heat treatment process is performed by suspending and/or supporting the workpiece member vertically or horizontally by an upper end and/or lower end is a matter of design choice since no significant problem is solved or unexpected

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result obtained by supporting the members in the orientation claimed versus that taught by the prior art.

It is noted that the Applicants recite specific article design limitations in claims 15 and 16, i.e., specific material limitations, however, such limitations must result in a manipulative difference in the recited process steps as compared to the prior art. In this instance these design limitations are held to be obvious and not given patentable weight in these method of manufacturing claims as such limitation(s) do not result in any difference in the *claimed* manufacturing process.

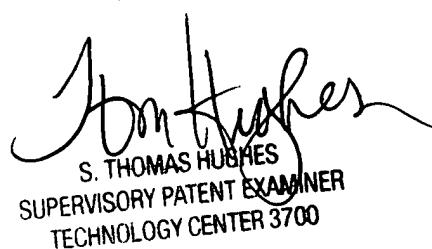
***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form PTO-892 encloses herewith.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Trinh Nguyen** whose telephone number is (703) 306-9082.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1148.

TTN

September 9, 2000



S. THOMAS HUGHES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700